

Shamsundar and Court Vs. Sha Sunnilal Vesaji and Court and anr.

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Court : Karnataka

Decided On : Jan-18-1961

Reported in : AIR1962Kant12; AIR1962Mys12

Judge : A.R. Somnath Iyer, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 73

Appellant : Shamsundar and Court

Respondent : Sha Sunnilal Vesaji and Court and anr.

Advocate for Def. : V. Narayanarao, Adv.

Advocate for Pet/Ap. : S. Sheshagirirao, Adv.

Judgement :

ORDER

(1) These two revision petition s arise our of proceedings under second. 73 of the Code of Civil procedure. In civil Revision Petition 827/59 the petitioner was a decree-holder who had obtained a decree against the judgment-debtor against whom the respondent had also obtained a decree. Both these decree-holders had attached certain movable properties belonging to their judgment-debtor and these movable were sold and the money realised by the sale was received by the court on March 17, 1959. By the time those assets were received by the court, both these decree-holders had made applications for the execution of their decrees.

(2) After the court below directed payment of the amount in deposit in court realised by the sale to the respondent -decree-holder, the petitioner-decree-holder made an application to the court below reminding that court that his own execution application was will pending before it, and that therefore there should be no payment of the entire amount to the respondent -decree-holder but that the assets in court should be ratably distributed between the two decree-holders.

That application was presented after the receipt of the assets by the court below and the court below made an order that since no application for rateable distribution has been presented by the petition -decree-holder before the receipt of those assets by the court, the petitioner was not entitled to rateable distribution. It is against this order that this revision petition is directed.

(3) Mr. Seshagiri Rao appearing for the petitioner-decree-holder contends that the order of the court below rests upon a clear sub construction of second. 73 of the Code of civil Procedure.

(4) Now in this case it cannot be disputed that the assets of which the petitioner claimed rateable distribution were assets held by the court below. The petitioner-decree-holder was the holder or a decree for the payment of money. It is also disposable for Mr. Sriada Rao appearing on behalf of the respondent -decree-holder to dispute that the petition-decree-holder had made an supplication for the execution of his decree before the receipt of the assets by the court below.

(5) But what Mr. Sripada Rao stoutly contends is that since the petitioner-decree-holder made no application for rateable distribution of the assets held by the court below before the receipt of those assets by that court, but had merely made an application for the execution of his decree before that date, he was not entitled to ratable distribution.

(6) The argument addressed by Mr. Sripada Rao is that in order to entitle a person to rateable distribution, there should be an application by him for rateable distribution to the court holding the assets before the receipt of those assets and that it is not enough if he has merely made an execution application to that court for the execution of his decree without claiming rateable distribution in it.

(7) This argument, to my mind, amounts to reading into section 73 words which are not contained there. What Section 73 requires, is that a decree-holder claiming rateable distribution should have made an application to the court for the execution of the decree obtained by him before the receipt of the assets by the court to which that application is made. but the section does not requires that person to make an application for rateable, distribution before that date. It is enough if he makes, an application for the execution of his decree.

(8) The words occurring to section 73 clearly indicate that those decree-holder only could share in the rateable distribution who have actually applied for the execution of their decrees to the court holding the assets. There is nothing in that section warranting the inference that in addition to those decree-holder applying for execution of their decrees they should with have made application for rateable distribution. Any other construction might lend to strange and incongruous results.

If more than one decree-holder apply for execution of their decree to a court on the same day without each of them being aware of the fact that the other has applied for such execution and the court to which those applications are made receives the assets referred to in section 73 of the Code of Civil Procedure on the next day and in the execution applications presented by those decree -holder non of them applies for rateable distribution, being unaware of the fact that their or another decree -holders executing decrees against the judgment- debtor, the construction suggest by Mr. S. Sripada Rao would led to the result that none of this decree -holder who applied for execution would be entitled to rateable distribution . A construction resulting in such unreasonable consequence is one which has to be discarded.

(9) As pointed out by their Lordship of the High Court of Madras in Abdul Salam Sahib v. Batcha Veerabhadra Raju , ILR 52 Mad 760: (AIR 1929 Mad 703) (FB), the purpose of section 73 of the Code of Civil Procedure is that there should be an equitably distribution of assets between those creditors who have been diligent enough to obtain decrees and put in execution applications before the time such assets have been received, and that the court should look rather to the substance than to the form of application in order to administer the equity which the law

provides.

That was a case in which the decree-holder applied to the court which pass the decree for the attachment of a fund which had been paid into the court to the credit of a suit filed by the defendant in the same court against the same judgment - debtors but the petition was defective in not containing some of the particulars required for an execution petition by order XX I, Rule 11 of the Code of Civil Procedure. It was held that that application through defective in form, was sufficient for purposes of section 73 of the Code of Civil Procedure and that the decree-holder was entitled to rateable distribution under that section. With this enunciation of the law I respectfully agree.

(10) I therefore hold that the application presented by the petitioner- decree-holder was an application on the basis of which he could claim rateable distribution if he was otherwise entitled to it . The court below was not right in rejecting his application on the ground that however made no application for rateable distribution before the receipt of assets by it. Its order must therefore be set aside.

(11) But Mr. Sripada Rao Contends that the respondent -decree-holder has other objections to urge to the claim made by the petitioner- decree-holder for rateable distribution and that the respondent -decree-holder should be given an opportunity to established that the petitioner- decree-holder has obtained satisfaction of his own decree.

(12) It is clear that, if the respondent- decree-holder has any other objections to raise to the claim made by the petitioner - decree-holder for rateable distribution, he entitled to raise such objections when the matter goes back to the court below

(13) I set aside the order under revision and direct that the application made by 6 the petitioner -decree-holder for rate able distribution shall be disposed of on its merits and according to law. The respondent decree-holder will be at liberty to urge all such objections as he wishes to urge to that claim being recognised.

(14) In the circumstances I make no order as to costs.

In regard to the Civil Revision Petition No. 1044/59, the complaint made by Mr. Sripada Rao on behalf of the petitioner -decree-holder that the court below was in error in ordering rateable distribution to the respondent decree-holder without hearing the objection of the petitioner -decree-holder , is well -founded and has to be upheld. The order under revision allowing ratable distribution to the respondent-decree-holder in accordingly set aside. The court below will now proceed to dispose of the application presented by respondent- decree-holder for rateable distribution after hearing the petitioner - decree-holder and his objections, if any. No costs.

(15) Petitions allowed.

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